



Right to Freedom Approach into the Judicial Thought in India

Vishal Sihag

LLM, Department of Law, OPJS University, Churu, Rajasthan

Abstract

The growth of civilization begot the formation and growth of state and government. The concept of state differed at different places and for different scholars. The modern civilized societies regard certain rights as important and fundamental for the happier life of the people and the state, that is, the political entity incorporates them in the Constitution so as to make them justiciable. The struggle for freedoms and rights has been ensued in almost all the countries at different times and period of History. The subject of rights is integrally concerned with the concept of freedom. It is the provision of rights with their due enforcement by the State that ensures freedom to a citizen and thereby enables him to seek the best possible development of his personality. History has also shown that freedom is the basic thing that goes to make up the ethos of man and civilization. Without it no one can attain happiness which is the true end of all human beings.

Keywords: Right to Freedom, Judicial Thought, Civilization, Constitution, Citizen

Concepts of Right to Freedom

The freedom of expression is a right without which other rights are difficult to acquire and defend. The right to freedom of expression is rooted in the 17th century struggle of European legislators for freedom of speech. The world has seen a continuing struggle for the freedom of expression, including the freedom of speech and freedom of the press, often going hand in hand with the endeavour to limit the power of governments. The freedom of expression can be considered an essential aspect of the individual's defence against government, just as the suppression of the freedom of expression is essential to tyranny. The concept of political freedom is closely connected with the concepts of civil liberties and human rights, which in democratic societies are usually afforded legal protection from the state. Freedom starts with a principle of self-control, also known as self-ownership. In a free society, each and every person has legal control (or "ownership") of their own body and mind.

Defining Right to Freedom

D.D. Raphael says, "Freedom means absence of restraints. A man is free so far as he is not restrained from doing what he wants to do or what he would choose to do if he knew that he could. The idea of choice itself implies a kind of freedom. Choice in the selection of one possibility among others..."

Rights are the means to that end. Therefore, the fundamental issue of politics is to provide to an individual an environment in which he is truly free to be himself. During the medieval period, liberty was associated with the liberty of the 'soul' and was deemed to lie in salvation. Christianity ruled out the question of liberty on this earth.

This study concerns the developments that have taken place and the way the Constitutional Right to Freedom granted under Article 19 has evolved to have the present bearing.

Thus the Right to Freedom along with other Fundamental Rights forms a very important part of our social, political and economic life and a deep study with regards to the effects of judicial pronouncements would enhance the understanding of the changed nature and scope of the aforesaid right in the present context.

The idea of freedom or liberty cannot be defined in precise terms. In fact what really besets is how to reconcile the idea of freedoms with the provisions of restraints. In other words, if liberty is to be differentiated from license, or man's right to do what he wills, the issue of restraints is bound to figure in.

According to Hegel, "Freedom is the fundamental character of the will, as weight is of matter... That which is free is the will. Will without freedom is an empty word."

Historical view of Human Rights

Under the educational system of British Raj, students were exposed to ideas of democracy, human rights and European political history. The Indian student community in England was further inspired by the workings of parliamentary democracy and British political parties.

Dr. Bhimrao Ambedkar considered two major purposes of Fundamental Rights, one that all the citizens could put forward their claim to them and secondly those responsible for making of laws must necessarily respect and abide by the philosophy underlying them.

The “Fundamental Rights” are fundamental in the sense that they have been incorporated in the fundamental law of the land i.e. the Constitution; are justiciable and enforceable by the courts and available to all citizens. They are binding on public authorities in India, on the Central government, state government and on local bodies.

Human Rights

A number of rights included in our Constitution are the ones for which the present day world society is deeply concerned about. It was this anxiety about the freedoms of men that the International Declaration of Human Rights was made on 10th December, 1948 by the United Nations. The Declaration comprises of all those rights for which there has struggle for centuries.

Human rights thus refer to the "basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education.

The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights.

Scheme of the Right to Freedom

In the Indian Constitution however, there is not only a formal declaration of fundamental rights but also a special provision for their enforcement. By the insertion of Part III the powers of the legislature and the Executive, both of the Union and the States, are further curtailed and the right to enforce the fundamental rights by direct application to the Supreme Court is removed from the legislative control.

The Constitution has conferred these positive rights in Article 19 to promote the ideal of liberty enshrined in the Preamble. Popularly known as “seven freedoms” they have now been reduced to six freedoms with the omission of the ‘right to acquire, hold and dispose of property’ by the 44th Constitutional Amendment Act, 1978. The remaining six categories of freedoms are as follows:

- a. Freedom of Speech and Expression
- b. Freedom of Assembly
- c. Freedom of Association
- d. Freedom of Movement
- e. Freedom of Residence and settlement
- f. Freedom of Profession, Occupation, Trade or Business

Nature of Rights guaranteed under Article 19

Article 19(1) guarantees ‘those great and basic rights which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country’. It does not accordingly include a right to burn a copy of the Nation’s Constitution. This Fundamental Right does not permit a citizen to carry on a business wherever he chooses e.g. on the street, or at any time, and his right must be subject to any reasonable restriction imposed by the executive in the interest of public convenience.

The Fundamental Rights are amendable. They can be amended but cannot be abrogated because that will violate the basic structure of the Constitution.

The Constitution of India has granted six Fundamental Rights to the citizens of India, viz.

Right to Equality: Article 14 of the Constitution lays down that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Right to Freedom: Article 19 (1) provides protection of certain rights regarding freedom of speech, etc. It says that all citizens shall have the right.

Right against Exploitation: Article 23 prohibits traffic in human beings and forced labour



Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Right to Freedom of Religion: Article 25 provides for freedom of and free profession, practice and propagation of religion

Cultural and Educational Rights: Article 29 provides for the protection of the interests of minorities. Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Right to Property: Rep. by the Constitution (Forty-fourth Amendment) Act, 1978.

Right to Constitutional Remedies: Article 32 guarantees the individual the right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this Part.

Conclusion

The constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of Art.19 of the Chapter on fundamental rights. The scope of rights incorporated in the Right to Freedom under the Indian Constitution is increasing continuously. The job which was once in the hands of Parliament is now being conducted by the judiciary despite being the fact that Parliament is the foundation of democracy. The right to life is not just the right to live but a healthy life free from disease and the complete physical, mental and social welfare of the citizens living in the society. The judiciary has given progressive interpretations to the Fundamental Rights, as a result this has enhanced the human dignity and value of human beings. Thus the role of judiciary in the evolution of fundamental rights has been really crucial and deserves penetration and study. At the same time it has to be added that the judiciary has done a commendable job in securing, safeguarding and protecting the rights of the citizens of India.

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